

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
MARCH 24, 2016**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Todd Crowley, Chair; Angelo Colasante, Vice Chair; Carol Amick, Clerk; Jeffrey Dearing; Michelle Puntillo; Kay Hamilton; Robert Kalantari

ABSENT: Arthur Smith

GUESTS: Christopher Laskey, Code Enforcement Director; Jeffrey Cohen, Planning Board Chair

Mr. Crowley introduced himself and read the emergency evacuation notice. The Zoning Board of Appeals (ZBA) members and assistant introduced themselves.

PRESENTATION: Ms. Amick read the notice of the hearing.

PETITION #036-16 – Carolyn Sarno, at 5 Sunnyfield Road, seeks a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning Bylaw to approve bump-out additions within front yard setback.

John Goldthwaite introduced himself as Ms. Sarno's husband and said that they were seeking relief for two small "bump-out" additions that extended into the setbacks. He went through the plot plan and elevation drawings with the Board, speaking about the dimensions and setbacks.

Ms. Amick said that the plans noted that the elevations were "preliminary" and she asked whether the applicant would be prepared to stand by these drawings as the final elevations, since they would be marked as exhibits. Mr. Goldthwaite said that he had no problem with the plans being marked as exhibits, as they were not planning to change any measurements.

Mr. Crowley said that the Board typically conditioned Special Permits with roof overhangs to state that they could not be enclosed unless the applicant returned to the ZBA; he asked whether the applicant had any issue with that. Mr. Goldthwaite said that he did not.

Mr. Colasante opened the hearing to the public. With no comments or questions from those in attendance, Mr. Crowley closed the public hearing.

DELIBERATIONS:

Mr. Crowley stated that this was a Special Permit application, which had two considerations: that the project was in keeping with the intent and purpose of the Bylaw and was not injurious or detrimental to the neighborhood. He said that he had no issues with this application and felt that it met those two Special Permit requirements. The other members all agreed.

MOTION:

Ms. Amick moved to grant Carolyn Sarno, at 5 Sunnyfield Road, a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning Bylaw to approve bump-out additions within front yard setback, substantially as shown on Exhibit 1 (front elevation), Exhibit 2 (left elevation), Exhibit 3 (right elevation), Exhibit 4 (foundation plan) Exhibit 5 (site plan), with the following conditions: that the front porch shall not be enclosed and that the encroachment into the front yard setback shall not be greater than shown on the preliminary plans.

Mr. Dearing seconded the motion.

Voting in favor: Crowley, Colasante, Amick, Dearing, and Puntillo

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Crowley explained that the Board had 14 days to write a decision, after which time there was a 20-day appeal period. The applicant was then responsible for getting the decision recorded at the Registry of Deeds. Once the decision was recorded, the applicant may apply for a Building Permit.

PRESENTATION: Ms. Amick read the notice of the hearing.

PETITION #029-16 – CONTINUATION – Sean Tierney, at 29 Hartford Street, seeks a Variance from Table II: Dimensional Regulations and from Section 14.7 of the Zoning Bylaw to construct garage addition within side yard setback, and seeks a Special Permit for addition totaling more than 600 square feet.

Mr. Tierney greeted the Board and introduced his wife, Sheena Santos, and stated that Attorney Pamela Brown would be representing them tonight. Ms. Brown said that she believed the Board could look at this application either as a Special Permit or a Variance. She said that Section 7.1.4 of the Zoning Bylaw first required a determination of whether the proposal intensified an existing non-conformity or created a new non-conformity, and any conceivable location of the proposed addition would, at a minimum, intensify the existing non-conformity by adding additional building area on a non-conforming lot– and therefore a Special Permit was justified.

There was discussion about whether a Special Permit or Variance was the more appropriate relief for this application. Mr. Dearing asked to hear about the Variance argument so that he could at least weigh both sides. Ms. Brown said that the existing dwelling was not situated with a floor plan that would allow the addition to be constructed in a manner to comply with setbacks, which caused a hardship for the applicants. She handed out an exhibit illustrating the entire Residence C zoning district, and noted that parcels this small in width were not common in the district. She talked about other possible locations for this garage and noted if they shifted it in any other way, the structure would be more of a burden to the neighbors; she said that the purpose and intent of the Bylaw was to provide reasonable setbacks to abutting uses, and they felt that the proposed garage location avoided placing the burden of a long non-conforming building setback on only one abutter.

The Board talked at great length with the applicants about the property and the existing and proposed non-conformities on it. It was noted that the proposed structure was quite large for a one-car garage. Ms. Brown said that it wasn't all for the garage; it also included the mudroom and the extension of the kitchen.

Mr. Crowley opened the hearing to the public.

Maureen Haviland, of 27 Hartford Street, said that she lived in the house directly to the north of the Tierneys. She showed the Board a printout from Google Maps demonstrating why the proposed location was better for her; she said that there was a large garage on one side of their back yard, and if the Tierneys' proposed garage was relocated, it would, in effect, create a tunnel in her back yard.

Mr. Laskey said that he felt the Variance test could be met in this case, because the size of the lot was fairly unique. He said that it was important to keep in mind that the Variance requirement reads, "those circumstances especially affect the land or structures of the petitioner but do not affect generally the zoning district in which the land or structures are located" – and that a district is far larger than a neighborhood. He said that there were four parcels, including 29 Hartford Street, that were about 50 feet in width, but the majority of homes in this district averaged 80 to 100 feet in width. He noted that the width of these four parcels could be considered unique in the same way that four parcels that were all straddled with the same outcropping of rock or ledge were unique.

With no further comments or questions from those in attendance, Mr. Crowley closed the public.

DELIBERATIONS:

The Board talked more about whether the appropriate relief was a Special Permit or a Variance. It was ultimately decided that the Board would look at this as a Variance.

Mr. Crowley suggested that the Board members weigh each of the four conditions required for a Variance:

1. *There are circumstances relating to the soil conditions, shape, or topography of such land or structures.* Mr. Crowley said that the size of the lot could be used for this condition; he stressed that one could not use this criteria for any undersized lot in any neighborhood, but he felt that this particular lot in this particular neighborhood met the condition. There was general agreement.

2. *Those circumstances especially affect the land or structures of the petitioner but do not affect generally the zoning district in which the land or structures are located.*

Ms. Amick said that Mr. Laskey's statement helped her greatly here, as she now felt that the Board could find this was true.

3. *A literal enforcement of the provisions of the by-law would involve substantial hardship, financial or otherwise, to the petitioner.* Ms. Hamilton said that her gut reaction to this application was that it wasn't a true hardship for the petitioner, because this stemmed from a want rather than from a need. She said that she understood the homeowners wanting a larger kitchen and a garage, but she did not necessarily believe that they truly needed those things; she added that they knew the circumstances about the size of the house and the lot when they bought the property. Mr. Crowley said that he understood that point of view, but he agreed with the petitioners that the lot was extremely small and had difficult parameters to work within.

4. *That desirable relief may be granted without substantial detriment to the public good and does not nullify or substantially derogate from the intent or purpose of the Bylaw.* Mr. Crowley said that he did believe this was without detriment to the public good, because the entire neighborhood had expressed support. Mr. Colasante said that he always valued the neighborhood input, and it helped that so many neighbors supported this application, but he still felt that the structure was a bit too large. The other Board members agreed, and it was suggested that the structure be reduced by a few feet along the south lot line in order to increase the setback from 4.9 feet to 7 feet at the closest point. After more dialogue, the applicants agreed to this change and initialed the modified plot plan. Mr. Crowley said that he believed that this modification helped make the application more in line with the intent and purpose of the Bylaw.

After final discussions, Mr. Crowley called for two separate motions – one for the Variance portion of the application and one for the Special Permit.

MOTION:

Ms. Amick moved to grant Sean Tierney, at 29 Hartford Street, a Variance from Table II: Dimensional Regulations and from Section 14.7 of the Zoning Bylaw to construct garage addition within side yard setback, substantially as shown on Exhibit 1 (site plan, with existing structure), Exhibit 2 (site plan with proposed addition, with applicant's initials), Exhibit 3 (front elevation), Exhibit 4 (left side elevation), Exhibit 5 (back yard elevation), and Exhibit 6 (right elevation).

Mr. Dearing seconded the motion.

Voting in favor: Crowley, Colasante, Amick, and Dearing

Voting against: None

Abstained: Hamilton

The motion carried, 4-0-1.

MOTION:

Ms. Amick moved to grant Sean Tierney, at 29 Hartford Street, a Special Permit for addition totaling more than 600 square feet.

Mr. Dearing seconded the motion.

Voting in favor: Crowley, Colasante, Amick, and Dearing

Voting against: None

Abstained: Hamilton

The motion carried, 4-0-1.

Mr. Crowley explained that the Board had 14 days to write a decision, after which time there was a 20-day appeal period. The applicant was then responsible for getting the decision recorded at the Registry of Deeds. Once the decision was recorded, the applicant may apply for a Building Permit.

At this time, Mr. Colasante left the meeting.

PRESENTATION: Ms. Amick read the notice of the hearing.

PETITION #035-16 – Jeffrey Chun, at 18 Roberts Drive, seeks a Variance per Table II: Dimensional Regulations and per Section 14.7 of the Zoning Bylaw to construct addition within front yard setback.

Mr. Chun introduced himself and stated that he and his wife wanted to create a mudroom in the front of their house. He said that, if they stayed within the allowable front yard setback, the area would only be three feet deep, but his wife was Japanese and it was traditional for her to take her shoes off when entering the house so they hoped to have extra room to do that, and they wanted to increase the room's depth to six feet to allow it. He stated that Art Smith had designed these plans, adding that the addition would also provide a grade-level window for the finished basement which was necessary for a second means of egress if his son were to move into that finished area.

There was further conversation about the size and dimensions of the proposed addition. Mr. Dearing asked whether Mr. Smith had mentioned any type of hardship for this

proposal; he said that the Board needed to find a substantial hardship on the lot in order to grant a Variance, and he was having a difficult time finding one here. Mr. Chun replied that his hardship was that the structure would be useless if it were cut down to the three feet allowed by right.

Mr. Crowley opened the hearing to the public.

Harold Asp, of 11 Roberts Drive, said that he was an abutter and had no objection to this addition.

Pamela Brown, of 12 Sorens Way, said that this addition couldn't go on any other part of the house because it was specifically for front entry, so although there was plenty of space on the lot, there was not enough space for this mudroom; therefore, she felt that a Variance could be granted.

With no further comments or questions from those in attendance, Mr. Crowley closed the public hearing.

DELIBERATIONS:

Mr. Colasante said that he could not see any substantial hardship with the application, because there were other alternatives that the applicants could work out involving an entry at a different point in the house. He said that if the Board granted this application, they may as well throw out the entire Variance puzzle and ignore all setback rules. Mr. Dearing agreed, stating that he also could not find that this application proved a substantial hardship.

Ms. Amick suggested that the applicant request a continuation so he could go over alternate plans with Mr. Smith, and perhaps talk to Mr. Laskey in the meantime in an attempt to modify the proposal. Mr. Crowley agreed that this was a good idea, noting that this application would not pass tonight as proposed. After further discussion, Mr. Chun agreed to a continuation.

MOTION:

Ms. Amick moved to continue Jeffrey Chun, at 18 Roberts Drive, seeking a Variance per Table II: Dimensional Regulations and per Section 14.7 of the Zoning Bylaw to construct addition within front yard setback to April 28, 2016 at 7:30 PM.

Mr. Dearing seconded the motion.

Voting in favor: Crowley, Amick, Dearing, Puntillo, and Hamilton

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

PRESENTATION: Ms. Amick read the notice of the hearing.

PETITION #034-16 – Pamela Brown, Esq., for Peter Salem, at 175 South Road, seeks to appeal the Building Inspector’s decision that a new two-family dwelling may not be built on a lot with an existing structure.

Ms. Brown stated that she was here tonight representing a developer, Peter Salem, who was interested in demolishing the existing single-family home on the lot at 175 South Road and building a two-family dwelling in its place. She read from Section 4.2.2.2 of the Zoning Bylaw (Lot existing on January 1, 1992), which states:

A two family dwelling may be built on a lot in existence on January 1, 1992, provided such lot was not held in common ownership with any adjoining land and has one and one half times the minimum lot area for the Zoning District and provided the following conditions are met...

Ms. Brown stated that it had always been Mr. Laskey’s position that this section applies only to vacant lots, but she disagreed, and that the purpose of this meeting was to appeal Mr. Laskey’s interpretation. She stated that the Bylaw did not contain many definitions, but “lot” was one of them, and its definition read: “An area of land in one ownership with definitive boundaries ascertainable from a recorded deed or recorded plan.” She stressed that the word “vacant” did not appear anywhere in this definition.

Ms. Brown added that Town Counsel had written an opinion letter agreeing with Mr. Laskey’s interpretation, but she believed that all of the case law provided by Town Counsel was irrelevant because it only referenced grandfathered lots. She concluded by noting that the Bylaw calls for a diversity of housing stock, and she believed that two-family houses did a lot to enhance the fabric of any town, and they should be encouraged, rather than discouraged, in Bedford.

Mr. Crowley asked whether Ms. Brown felt that any lot that has one and a half times the minimum required lot size could have a two-family dwelling put on it. Ms. Brown replied that she did feel that way, because she believed that was what the Bylaw intended; she added that she thought it was inappropriate to add words to a Bylaw definition.

There was extensive discussion about Section 4.2.2.2 of the Zoning Bylaw, including speculation on its intent and its potential effect on the town if it applied to lots with single-family homes currently on them. Mr. Dearing said that, in his opinion, Ms. Brown did have a valid point that the Bylaw did not specify “vacant” when it refers to lots.

Ms. Amick asked whether the applicant had ever considered converting the existing single-family house on the lot into a two-family. Mr. Salem said that he had not considered that option, because it would not be financially feasible.

Mr. Crowley opened the hearing to the public, first asking Mr. Laskey for his thoughts. Mr. Laskey stated that he had always read Section 4.2.2.2 of the Bylaw as referring to vacant lots; he said that, in his opinion, the language implied the lot is vacant with the

wording “...*may be built on a lot in existence on January 1, 1992,...*” and condition (a) which states “*The two family dwelling shall be new construction, it cannot be conversion of an existing building.*” He said that the other reason he felt this section dealt with a vacant lot was that the previous section, Section 4.2.2.1, actually addressed a lot that has an existing single-family dwelling on it and the conversion of said structure to a two-family with the granting of a Special Permit through the Board. Mr. Laskey commented that he was also concerned about the broader ramifications in the town, because, if Ms. Brown’s opinion stood, it meant that there could be a scenario where a developer can approach owners of single-family dwellings on over-sized lots and offer them an above market price knowing that a two-family dwelling can be built in its place as-of-right; he said that he did not feel that this was the intent of the Bylaw.

Nancy Lindscott, of 169 South Road, said that she was not necessarily against a two-family house being built on the lot, but she did feel that the intent of the Bylaw should be made more specific, because this could potentially affect many lots in Bedford.

Mark and Jeanette Lawrence, of 179 South Road, both stressed that there was a wetland at the back of the property at 175 South Road, and many neighbors were concerned about the placement of a new house on that lot and how it would affect the water runoff. Ms. Amick said that wetlands were a legitimate concern, but hoped the neighbors realized that any wetlands issues would be under the purview of the Conservation Commission.

Robert Iovino, of 183 South Road, said that he had similar problems with water and drainage. He said he would rather see a single-family home be built on the lot at 175 South Road, because he believed a two-family home would cause more water and drainage problems.

George Stathakis, of 168 South Road, said that if the applicant’s opinion were upheld, it could mean that many two-family homes will be built around town. He said that the Board members had to consider whether that was what they really wanted.

Mr. Cohen said that he agreed with Ms. Brown’s assertion that the Bylaw did not specify that the lots in question had to be vacant, and he therefore believed that it could be reasonable to assume that any lots, whether they had houses on them or not, could allow two-family homes provided that they met the other requirements of Section 4.2.2.2. He added that two-family homes might address some housing needs in town and allow for more affordability and diversity of housing stock.

With no further comments or questions from those in attendance, Mr. Crowley closed the public portion of the hearing.

DELIBERATIONS:

Ms. Amick said that she felt uncomfortable acting on the application presented without some more information. She said she thought it would be very helpful if either the

applicants or Mr. Laskey could find documentation regarding the committee that wrote and approved this section of the Bylaw, and what its intent was. She said that she would also like to get a follow-up response from Town Counsel, addressing Ms. Brown's comments. The other members agreed that more information on both sides of the argument would be useful. After more discussion, the applicants agreed to continue the hearing to the next meeting, on April 14.

MOTION:

Ms. Amick moved to continue Pamela Brown, Esq., for Peter Salem, at 175 South Road, seeking to appeal the Building Inspector's decision that a new two-family dwelling may not be built on a lot with an existing structure, to April 14, 2016 at 7:30 PM.

Mr. Dearing seconded the motion.

Voting in favor: Crowley, Amick, Dearing, Puntillo, and Hamilton

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

PRESENTATION: Ms. Amick read the notice of the hearing.

PETITION #028-16 – CONTINUATION – Pamela Brown, Esq., for Bruegger's Bagels, at 158K Great Road, seeks a modification to Special Permit #018-16 to add patio seating.

Ms. Brown handed out an updated application that provided further information about the patio seating at Bruegger's Bagels. She said that the proposal included three tables with four seats each, for a total of twelve seats. She noted that Glenn Garber, the Planning Director, has indicated that he had no interest in bringing this back before the Planning Board for site plan review, so the jurisdiction now lay entirely with the ZBA.

The Board talked at length with Ms. Brown about the layout of the space, along with parking, landscaping, and safety issues. Mr. Crowley said that he would like to see bollards around the perimeter to prevent, or at least deter, cars from moving onto the space.

Mr. Dearing said he had no problem with the proposal, as it was only 12 seats. Mr. Crowley agreed, adding that the proposed area was just a huge and ugly slab of concrete, so the seats might, at the very least, make it look more attractive.

Mr. Crowley opened the hearing to the public.

Mr. Cohen said that, for the record, the Planning Board members had no problem with not reviewing this patio seating, as they considered it a minor modification to the site

plan. He said that the Board should spell out expectations in terms of safety and aesthetics so that whoever is responsible for maintaining these seats will have a clear set of guidelines.

There was extensive discussion about the conditions that should be placed on the Special Permit, including trash receptacles, the installation of bollards, and how the seats would be secured.

MOTION:

Ms. Amick moved to grant Pamela Brown, Esq., for Bruegger's Bagels, at 158K Great Road, a modification to Special Permit #018-16 to add patio seating, substantially as shown on Exhibit 1 (Bruegger's patio seating layout), Exhibit 2 (proposed patio plan), and Exhibit 3 (Building B north sidewalk revision), and with the following conditions:

- 1) Bruegger's shall provide and maintain a trash receptacle in close proximity to the concrete patio area;
- 2) The outdoor seating shall be allowed on a seasonal basis, from April 1 to November 1;
- 3) If the tables will be accompanied by umbrellas, the umbrellas must be securely fastened;
- 4) The tables and chairs shall not be permanently affixed to the concrete;
- 5) The chairs and tables shall not infringe upon the handicapped accessible route;
- 6) A manufacturer's cut sheet for tables and chairs shall be submitted by the applicant to demonstrate that the proposed seating is durable and fits within the designated patio area;
- 7) Bruegger's shall provide a minimum of three bollards to improve the safety of pedestrians and patrons;
- 8) A manufacturer's cut sheet on the bollards shall be submitted by the applicant.

Ms. Puntillo seconded the motion.

Voting in favor: Crowley, Amick, Dearing, Puntillo, and Hamilton

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Crowley explained that the Board had 14 days to write a decision, after which time there was a 20-day appeal period. The applicant was then responsible for getting the decision recorded at the Registry of Deeds. Once the decision was recorded, the applicant may move forward with the project.

BUSINESS MEETING:

Extension of Special Permit #032-13 – 145 Page Road

Mr. Laskey said that he believed this Special Permit had already been acted on in some capacity, which would mean that an extension was not necessary. He said that he would look into the paperwork for the project and let the Board members know if an extension was still necessary.

Extension of Variance #018-15 – 2 Hamilton Road

MOTION:

Ms. Amick moved to grant an extension to Variance #018-15 for 2 Hamilton Road.

Ms. Hamilton seconded the motion.

Voting in favor: Crowley, Amick, Dearing, Puntillo, and Hamilton

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Proposed Bylaw Amendment

Mr. Crowley talked briefly with the Board members about his presentation for the proposed Bylaw amendment at the upcoming Annual Town Meeting.

Adjournment

Ms. Amick moved to adjourn the meeting.

Ms. Hamilton seconded the motion.

Voting in favor: Crowley, Colasante, Amick, Dearing, Puntillo, Hamilton, and Kalantari

Voting against: None

Abstained: None

The motion carried unanimously, 7-0-0.

The meeting adjourned at 11:25 PM.

Todd Crowley, Chair

Date

Respectfully Submitted,

Scott Gould
ZBA Assistant